

### **Remarks**

Claims 4, 8-14, 16, 18, and 20-24, 26-29, and 31-38 are pending in this application. Claims 4, 8, 13, 20, 23, 26, 27, and 31 has been amended and claims 17, 25, and 30 have been cancelled. Applicant believes the claim amendments and the accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

### **Claim Rejections**

Claims 4, 8-14, 16-18, and 20-38 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,163,960 to Bonutti ("Bonutti"). In response, Applicant respectfully submits that these rejections should be withdrawn.

Bonutti relates to surgical devices such as implants or suture fastenings which are assembled from a plurality of discrete components, one of which components includes a heat bondable material for adhering the components together. (Col. 1, lns. 7-11).

FIG. 2 of Bonutti depicts a bone screw (162) positioned through a bone. Where a bone plate (168) on positioned over the bone screw, and a fastener (170) is used bonded to the screw and/or plate. The opposite end of the screw is held in position with a second fastener (164). The fasteners (164 and 170) are made of bondable material, such that they can be bonded to the screw and/or plate. Accordingly, item 164 is not a rigid bone plate, but a fastener bondable to the screw. Additionally, FIG. 2 fails to disclose a suture positionable through the bone.

FIG. 9 of Bonutti depicts a suture having an expandable suture anchor (150) at one end. The suture anchor is positioned in a gouge (146) in the soft cancellous tissue under the cortical bone. The suture anchor is inserted into the gouge with a cannula (152), where an end portion of the cannula is positioned in the gouge and the suture anchor is inserted through the cannula. The cannula is removed, allowing the anchor to expand in the gouge, securing the suture in the gouge. The opposite end of the suture is positioned through the tendon, where a bondable fastener (156) is bonded to the suture to secure the position of the tendon on the bone. Accordingly, items 150 and 156 are not rigid bone plates, item 150 is defined as an expandable anchor and item 156 is a bondable fastener. Additionally, item 144 is a cannula used for positioning the expandable

anchor in the gouge, and is not tubular member positioned through the bone, in which the suture is disposed. Furthermore, the device depicted in FIG. 9 is not positioned through the bone.

Accordingly, Applicant submits that Bonutti does not disclose or suggest all of the features of the claimed invention. For example, each of claims 4, 13, and 23 now recites, *in part*, at least one fastener positionable through the first rigid bone plate into the bone to hold the first rigid bone plate to the bone. Claim 8 now recites, *in part*, a tubular member positionable in the bone through the fractured, generally orthogonal to the first bone plate, wherein the tubular member remains in the bone such that the suture is disposed within the tubular member.

In light of the foregoing, claims 4, 8, 13, and 23 are respectfully submitted to be patentable over Bonutti. As claims 36-38 depend from claim 4, claims 9-12 depend from claim 8, claims 14, 16, 18, 20-22, 34, and 35 depend from claim 13, and claims 24, 26-29, and 31-33 depend from claim 23, and necessarily include all the elements of their respective base claim, Applicant respectfully submits that these dependent claims are also patentable over Bonutti at least for the same reasons.

### Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed to be due. However, please charge any required fees (or credit any overpayment of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 782-A03-009-3).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Bianco", with a long horizontal stroke extending to the right.

Paul D. Bianco, Reg. # 43,500

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